

requirements that we order under section 522 of the act and this part, your device is considered misbranded under section 502(t)(3) of the act and you are in violation of section 301(q)(1)(C) of the act.

§ 822.2 What is the purpose of this part?

The purpose of this part is to implement our postmarket surveillance authority to maximize the likelihood that postmarket surveillance plans will result in the collection of useful data. These data can reveal unforeseen adverse events, the actual rate of anticipated adverse events, or other information necessary to protect the public health.

§ 822.3 How do you define the terms used in this part?

Some of the terms we use in this part are specific to postmarket surveillance and reflect the language used in the statute (law). Other terms are more general and reflect our interpretation of the law. This section of the part defines the following terms:

(a) *Act* means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.*, as amended.

(b) *Designated person* means the individual who conducts or supervises the conduct of your postmarket surveillance. If your postmarket surveillance plan includes a team of investigators, as defined below, the designated person is the responsible leader of that team.

(c) *Device failure* means a device does not perform or function as intended, and includes any deviation from the device's performance specifications or intended use.

(d) *General plan guidance* means agency guidance that provides information about the requirement to conduct postmarket surveillance, the submission of a plan to us for approval, the content of the submission, and the conduct and reporting requirements of the surveillance.

(e) *Investigator* means an individual who collects data or information in support of a postmarket surveillance plan.

(f) *Life-supporting or life-sustaining device used outside a device user facility* means that a device is essential to, or

yields information essential to, the restoration or continuation of a bodily function important to the continuation of human life and is used outside a hospital, nursing home, ambulatory surgical facility, or diagnostic or outpatient treatment facility. A physician's office is not a device user facility.

(g) *Manufacturer* means any person, including any importer, repacker, and/or relabeler, who manufactures, prepares, propagates, compounds, assembles, processes a device, or engages in any of the activities described in § 807.3(d) of this chapter.

(h) *Postmarket surveillance* means the active, systematic, scientifically valid collection, analysis, and interpretation of data or other information about a marketed device.

(i) *Prospective surveillance* means that the subjects are identified at the beginning of the surveillance and data or other information will be collected from that time forward (as opposed to retrospective surveillance).

(j) *Serious adverse health consequences* means any significant adverse experience related to a device, including device-related events that are life-threatening or that involve permanent or long-term injuries or illnesses.

(k) *Specific guidance* means guidance that provides information regarding postmarket surveillance for specific types or categories of devices or specific postmarket surveillance issues. This type of guidance may be used to supplement general guidance and may address such topics as the type of surveillance approach that is appropriate for the device and the postmarket surveillance question, sample size, or specific reporting requirements.

(l) *Surveillance question* means the issue or issues to be addressed by the postmarket surveillance.

(m) *Unforeseen adverse event* means any serious adverse health consequence that either is not addressed in the labeling of the device or occurs at a rate higher than anticipated.

§ 822.4 Does this part apply to me?

If we have ordered you to conduct postmarket surveillance of a medical device under section 522 of the act, this

part applies to you. We have the authority to order postmarket surveillance of any class II or class III medical device, including a device reviewed under the licensing provisions of section 351 of the Public Health Service Act, that meets any of the following criteria:

- (a) Failure of the device would be reasonably likely to have serious adverse health consequences;
- (b) The device is intended to be implanted in the human body for more than 1 year; or
- (c) The device is intended to be used to support or sustain life and to be used outside a user facility.

Subpart B—Notification

§ 822.5 How will I know if I must conduct postmarket surveillance?

We will send you a letter (the postmarket surveillance order) notifying you of the requirement to conduct postmarket surveillance. Before we send the order, or as part of the order, we may require that you submit information about your device that will allow us better to define the scope of a surveillance order. We will specify the device(s) subject to the surveillance order and the reason that we are requiring postmarket surveillance of the device under section 522 of the act. We will also provide you with any general or specific guidance that is available to help you develop your plan for conducting postmarket surveillance.

§ 822.6 When will you notify me that I am required to conduct postmarket surveillance?

We will notify you as soon as we have determined that postmarket surveillance of your device is necessary, based on the identification of a surveillance question. This may occur during the review of a marketing application for your device, as your device goes to market, or after your device has been marketed for a period of time.

§ 822.7 What should I do if I do not agree that postmarket surveillance is appropriate?

- (a) If you do not agree with our decision to order postmarket surveillance

for a particular device, you may request review of our decision by:

- (1) Requesting a meeting with the Director, Office of Surveillance and Biometrics, who generally issues the order for postmarket surveillance;
- (2) Seeking internal review of the order under § 10.75 of this chapter;
- (3) Requesting an informal hearing under part 16 of this chapter; or
- (4) Requesting review by the Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee.

- (b) You may obtain guidance documents that discuss these mechanisms from the Center for Devices and Radiological Health's (CDRH's) Web site (www.fda.gov/cdrh/resolvingdisputes), and from the CDRH Facts-on-Demand system (800-899-0381 or 301-827-0111).

Subpart C—Postmarket Surveillance Plan

§ 822.8 When, where, and how must I submit my postmarket surveillance plan?

You must submit your plan to conduct postmarket surveillance within 30 days of the date you receive the postmarket surveillance order. For devices regulated by the Center for Biologics Evaluation and Research, send three copies of your submission to the Document Control Center (HFM-99), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448. For devices regulated by the Center for Drug Evaluation and Research, send three copies of your submission to the Central Document Room, Center for Drug Evaluation and Research, Food and Drug Administration, 5901-B Ammendale Rd., Beltsville, MD 20705-1266. When we receive your original submission, we will send you an acknowledgment letter identifying the unique document number assigned to your submission. You must use this number in any correspondence related to this submission.

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